

## **REMARKS/ARGUMENTS**

Claims 1-29 were previously pending in the application. Claims 3-4, 13, 14, 21, 22, and 25-27 are amended, and claims 1, 2, 11, and 12 are canceled herein. Assuming the entry of this amendment, claims 3-10 and 13-29 are now pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

### **Rejections Under 35 U.S.C. 103**

In paragraph 3 of the Office Action, the Examiner rejected (i) claims 1-3 and 11-13 under 35 U.S.C. 103(a) as being unpatentable over Gebis in view of Lund, (ii) claims 4-10 and 14-20 under 35 U.S.C. 103(a) as being unpatentable over Gebis and Lund in view of Schmidt, and (iii) claims 21-26 under 35 U.S.C. 103(a) as being unpatentable over Gebis in view of Lund and further in view of Uematsu.

For the following reasons, the Applicant submits that all of the pending claims are allowable over the cited references.

### **Claims 4 and 14**

Claim 4, as amended, recites “[a] method of wirelessly providing, over the Internet, access to specialized content by a user, comprising the steps of: providing one or more wireless connection nodes in a geographically defined receiving area; delivering over the Internet to said one or more wireless connection nodes content selected by an operator of said one or more wireless connection nodes, wherein said content is (1) specific to said geographically defined receiving area and (2) selected by the operator independent of the user and independent of any preference of the user; transmitting said delivered content via said one or more wireless connection nodes; and users located in said geographically defined receiving area receiving said transmitted delivered content with a plurality of receivers configured to receive content transmitted via said one or more wireless connection nodes, wherein: (i) said plurality of receivers are further configured to separately tune to each of the plural stations, (ii) said transmission step further comprises at least the step of transmitting a unique spreading code for each of said plural stations; and (iii) said receiving step comprises at least the steps of: (a) a first receiver of said plurality of receivers receiving said unique spreading codes; (b) the first receiver selecting a selected one of said plural stations to play to a first user; and (c) the first receiver using said unique spreading codes to play to the first user the delivered content associated with the selected one of said plural stations.” (Enumeration added.)

The Examiner admitted that Gebis fails to disclose transmitting a unique spreading code for each of plural stations, receiving the unique spreading codes, selecting one of plural stations to play, and using the unique spreading codes to play the delivered content associated with the selected one of plural stations. (See Office Action, page 4.) The Examiner asserted that Schmidt, column 2, lines 11-18, discloses separating message channels with different sets of code words and receiving information necessary for accessing channels by using spread codes. The Examiner further asserted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis to implement the feature of sending a unique spreading code for each station to allow different radio networks to share the radio spectrum. (See Office Action, page 4.)

The Applicant respectfully disagrees for two reasons. First, the motivation to combine Gebis, Lund, and Schmidt alleged by the Examiner lacks merit. Second, even if Gebis, Lund, and Schmidt were combined, the resulting combination would not “use said unique spreading codes to play to the first user the delivered content” associated with the selected one of said plural stations.”

According to the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed (Slip. Op. at 144). Moreover, in her May 3, 2007 Memorandum to Technology Center Directors, Margaret A. Focarino, Deputy Commissioner for Patent Operations, clearly states that “in formulating a rejection under 35 U.S.C. §103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.”

Here, Gebis discloses a portable personal radio (PPR) that allows a user to listen to audio information that is personalized to the user by a PPR server and then is transmitted to the user's device. Communication between the user's device and the PPR server begins by establishing a communications channel between the user's device and the PPR server. According to Gebis, the channel may be established via a cellular phone with a separate or integrated cellular modem, a cellular-digital-packet-data-capable phone, or a wireless data radio. (See Gebis, column 4, lines 27-43.) After a communication channel is established, the client identifies itself to the server and sends a request for specific content from the server, which in turn begins sending the requested content, which is personalized to the user. (See *id.*, column 4, lines 44-50; column 5, lines 9-14.) As such, it is clear from Gebis that each user's device in the PPR system establishes a unique communication channel with the PPR server, so that content personalized to the user may be transmitted to, and received by, the user.

The Examiner asserted that one of ordinary skill in the art would be motivated to modify the system of Gebis to provide a unique spreading code for each station to allow different radio networks to share the radio spectrum. But the Examiner fails to account for the fact that, in Gebis, a unique communication channel between the user's device and the PPR server is already established. Given the existence of the unique communication channel between the user's device and the PPR server, the alleged motivation to combine Gebis and Schmidt (i.e., to allow different radio networks to share the radio spectrum) is illusory. Further encoding station content to further subdivide the radio spectrum would simply be expensive and unnecessary.

Such hindsight reasoning is clearly an improper basis for the finding of obviousness. See, e.g., *In re Fritch*, 972, F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (“[I]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious . . . This court has previously stated that ‘[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.’”); *Texas Instruments Inc. v. U.S. Int'l Trade Comm'n*, 988 F.2d 1165, 1178, 26 USPQ2d 1018, 1029 (Fed. Cir. 1993) (“Absent . . . [a] suggestion to combine the references, respondents can do no more than piece the invention together using the patented invention as a template. Such hindsight reasoning is impermissible.”); *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) (“As in all determinations under 35 U.S.C. section 103, the decisionmaker must bring judgment to bear. It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps.”); *Symbol Technologies Inc. v. Opticon Inc.*, 17 USPQ2d 1737, 1746 (S.D.N.Y. 1990), *aff'd*, 935 F.2d 1569, 19 USPQ2d 1241 (Fed. Cir. 1991) (“That a technician, in hindsight,

could combine elements known within the technology to produce the contested patent does not make the patent obvious to one skilled in the art at the time the patent was issued."); In re Dow Chemical Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art . . . Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure."); In re Stencel, 828 F.2d 751, 755, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987) (obviousness cannot be established "by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion that the combination be made.").

Moreover, even if Gebis, Lund, and Schmidt were combined, the resulting combination would not "us[e] said unique spreading codes to play to the first user the delivered content associated with the selected one of said plural stations." According to the Examiner, "Schmidt was relied on showing teaching on utilizing spread codes in content delivery since it is common in the art the user of spreading codes in providing subsequent delivery of content with coded information [sic]." (Office Action, page 7.) The Applicant respectfully disagrees.

The only portion of Schmidt cited by the Examiner is column 2, lines 11-18. (See Office Action, page 4.) This portion states:

The mobile stations know the frequency position of the possible sets of channels, the corresponding time channel and the code words for the control channels provided within the digital radio transmission system. Having this knowledge, the mobile station can search for an appropriate control channel and can receive there all the information necessary for accessing (for example, the frequency of the narrow-band (return) direction from the mobile station to the base station of the control channel).

(Schmidt, column 2, lines 11-25.) Thus, Schmidt teaches using code words for control channels. Schmidt, however, fails to teach or even suggest "using said unique spreading codes to play to the first user the delivered content associated with the selected one of said plural stations," as recited in claim 4.

Rather, only the Applicant has proposed the use of spreading codes to differentiate each Internet radio station (or webcast) within a channel: "In accordance with the present invention, the content provider who controls server 112 can lease at least one RF band [a.k.a., channel] on the cellular radio tower 110. This enables the content provider to deliver several 'stations' (e.g., 20 to 40 stations, depending upon the basic operation of a particular CDMA cell). Each 'station' has a unique spreading code and thus is separately 'tunable'." (Specification, page 5, lines 13-16.) Further, "information is passed from the base station to all the hand-held mobile terminal devices in the area, providing information on what spreading codes are used and what stations are associated with the codes." (Id., page 9, line 8-10.) The Applicant respectfully submits that this use of existing cellular technology to provide a plurality of streaming Internet radio stations to a digital radio receiver (i) represents a significant contribution to the art of personal digital radio and (ii) is both novel and nonobvious.

For all these reasons, the Applicant submits that claim 4 is allowable over the cited references. For similar reasons, the Applicant submits that claim 14 is also allowable over those references.

Because claims 3, 5-10, 13, and 15-20 depend directly or indirectly from claims 4 or 14, it is further submitted that those claims are also allowable over the cited references.

The Applicant therefore respectfully submits that the rejections of claims 3-10 and 13-20 under Section 103 have been overcome.

#### Claims 21 and 22

Claim 21, as amended, recites “[a] system for wirelessly providing, over the Internet, access to specialized content by a user, comprising: one or more wireless connection nodes in a geographically defined receiving area, each of said one or more wireless connection nodes including a transmitter; a processor, coupleable to said one or more wireless connection nodes, said processor storing content and delivering over the Internet to said one or more wireless connection nodes content selected by an operator of said one or more wireless connection nodes wherein: said content is (1) specific to said geographically defined receiving area and (2) selected by the operator independent of the user and independent of any preference of the user, and said transmitters transmit said delivered content to said receiving area; a receiver in wireless communication with said one or more wireless connection nodes, said receiver receiving said transmitted delivered content; one or more other wireless connection nodes in an other geographically defined receiving area different from said geographically defined receiving area, each of said one or more other wireless connection nodes including an other transmitter, wherein other content transmitted by each other transmitter is (1) specific to said other geographically defined receiving area, (2) selected independent of the user and independent of any preference of the user, and (3) different from said content specific to said geographically defined receiving area.”

The Examiner asserted, inter alia, that Gebis, column 3, lines 44-50, discloses receiving transmitted delivered content at the first time and other transmitted delivered content at the second time. The Examiner further asserted that Uematsu discloses transmitting content users based on a gatekeeping apparatus, and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis with the teaching of Uematsu for the benefit of providing secure content delivery. (See Office Action, page 5.)

The Applicant respectfully submits that these assertions by the Examiner are relevant to claim 23, not claim 21. The Examiner did not provide any explanation whatsoever to support the rejection of claim 21. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitations recited in claim 21.

The Applicant therefore respectfully submits that the rejection of claim 21 is improper and should be withdrawn. For similar reasons, the rejection of claim 22 is improper and should be withdrawn.

#### Claims 23 and 24

Claim 23 recites “[t]he system of claim 21, further comprising: a receiver (i) in wireless communication with said one or more wireless connection nodes at a first time and (ii) in wireless communication with said one or more other wireless connection nodes at a second time, said receiver receiving said transmitted delivered content at said first time and said other transmitted delivered content at said second time, wherein the content available to the receiver at each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives.”

The Examiner asserted that Gebis, column 3, lines 44-50, teaches receiving transmitted delivered content at the first time and other transmitted delivered content at the second time. (See Office Action, page 5.) The Examiner admitted that Gebis fails to disclose that each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives. The Examiner asserted instead that Uematsu, Figure 1, element 4, discloses transmitting content to users based on a gatekeeping apparatus and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis with the teaching of Uematsu for the benefit of providing secure content delivery. (Id.) The Applicant respectfully disagrees.

As an initial matter, the Examiner has failed to allege that any cited reference teaches or even suggests “a receiver (i) in wireless communication with said one or more wireless connection nodes at a first time and (ii) in wireless communication with said one or more other wireless connection nodes at a second time,” as recited in claim 23. As such, the rejection of claim 23 is improper on its face and should be withdrawn.

Moreover, while Uematsu, Figure 1, admittedly depicts block 4 identified as a “gatekeeping apparatus” connected to a block 3 identified as a “communications network (wireless and fixed),” it is nevertheless entirely unclear from Figure 1 what the function or operation of the gatekeeping apparatus is. Figure 1 also fails to teach or suggest that communications network 3 has a plurality of wireless connection nodes, or that the operation of the gatekeeping apparatus is related to which of the wireless connection nodes the receiver connects to. As a result, the cited portion of Uematsu fails to either teach or even suggest that “the content available to the receiver at each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives,” as recited in claim 23.

The Applicant therefore respectfully submits that the above discussion provides additional reasons for the assertions that claim 23 is allowable over the cited references, and, for similar reasons, claim 24 is also allowable over the cited references.

#### Claims 25 and 26

Claim 25, as amended, depends from claim 22 and recites the additional limitation that “the content available to the users is pre-specified based solely on the wireless connection node whose transmission the receiver receives, such that no determination of the user’s current geographic location is required before the delivered content is transmitted.”

The Examiner asserted that Gebis, column 3, lines 44-50, discloses receiving transmitted delivered content at the first time and other transmitted delivered content at the second time. The Examiner further asserted that Uematsu discloses transmitting content users based on a gate keeping apparatus, and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis with the teaching of Uematsu for the benefit of providing secure content delivery. (See Office Action, page 5.)

The Applicant respectfully submits that these assertions by the Examiner are relevant to claim 23, not claim 25. The Examiner did not provide any explanation whatsoever to support the rejection of claim 25. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitations recited in claim 25.

The Applicant therefore respectfully submits that the rejection of claim 25 is improper and should be withdrawn. For similar reasons, the rejection of claim 26 is improper and should be withdrawn.

#### Claim 27

Claim 27, as amended, recites “[a] method of broadcasting, comprising: a wireless connection node receiving first content originating from a first content source and second content originating from a second content source; the wireless connection node spreading the first content using a first spreading code and the second content using a second spreading code; and the wireless connection node broadcasting the first and second spreading codes and the spread first and second content, wherein a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play to a plurality of users the selected one of the first and second content.”

The Examiner asserted that Uematsu, Figure 1, discloses a wireless connection node (element 3) receiving first media content originating from a first content source and second media content originating from a second content source (two content servers, element 2). The Examiner admitted that Uematsu fails to disclose the wireless connection node spreading the first content using a first spreading code and the second content using a second spreading code; and the wireless connection node broadcasting the first and second spreading codes and the spread first and second content, wherein a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play the selected one of the first and second content. The Examiner instead asserted that Schmidt, column 2, lines 11-18, discloses separating message channels with different sets of code words and receiving information necessary for accessing channels by using spread codes. The Examiner asserted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Uematsu to implement the future of utilizing spreading codes for the benefit of providing efficient and reliable content delivery to a given user. (See Office Action, page 6.) The Applicant respectfully disagrees.

Schmidt, column 2, lines 11-18, states:

The mobile stations know the frequency position of the possible sets of channels, the corresponding time channel and the code words for the control channels provided within the digital radio transmission system. Having this knowledge, the mobile station can search for an appropriate control channel and can receive there all the information necessary for accessing (for example, the frequency of the narrow-band (return) direction from the mobile station to the base station of the control channel).

(Schmidt, column 2, lines 11-25.) Thus, Schmidt teaches using code words for control channels. The cited portion of Schmidt, however, fails to teach or even suggest the limitation that “a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play to a plurality of users the selected one of the first and second content.” as recited in claim 27.

Rather, as discussed above, only the Applicant has proposed the use of spreading codes to differentiate each Internet radio station (or webcast) within a channel: “In accordance with the

present invention, the content provider who controls server 112 can lease at least one RF band [a.k.a., channel] on the cellular radio tower 110. This enables the content provider to deliver several 'stations' (e.g., 20 to 40 stations, depending upon the basic operation of a particular CDMA cell). Each 'station' has a unique spreading code and thus is separately 'tunable.'" (Specification, page 5, lines 13-16.) Further, "information is passed from the base station to all the hand-held mobile terminal devices in the area, providing information on what spreading codes are used and what stations are associated with the codes." (Id., page 9, line 8-10.) Using the hand-held mobile terminal devices, a plurality of users may receive and listen to a plurality of radio stations. Moreover, all of the users may tune to the same radio station, if so desired. The Applicant respectfully submits that this use of existing cellular technology to provide a plurality of streaming Internet radio stations to a digital radio receiver (i) represents a significant contribution to the art of personal digital radio and (ii) is both novel and nonobvious.

The Applicant further submits that the motivation to combine Uematsu and Schmidt alleged by the Examiner is insufficient. The alleged motivation to combine Uematsu and Schmidt is "for the benefit of providing efficient and reliable content delivery to a given user." (Office Action, page 6.) The Applicant respectfully submits that the Examiner has failed to explain how or why combining Uematsu and Schmidt would result in "efficient and reliable content delivery to a given user."

For all these reasons, the Applicant submits that claim 27 is allowable over Uematsu and Schmidt. Because claims 28-29 depend directly or indirectly from claim 27, it is further submitted that those claims are also allowable over the cited references.

#### Claim 28

Claim 28 recites "[t]he method of claim 27, wherein the first content and the second content comprise information specific to a geographically defined receiving area comprising the wireless connection node."

The Examiner has not provided any explanation whatsoever to support the rejection of claim 28. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitation recited in claim 28.

The Applicant therefore respectfully submits that the above discussion provides additional reasons for the assertion that the rejection of claim 28 is improper and should be withdrawn.

#### Claim 29

Claim 29 recites "[t]he method of claim 27, wherein the first and second contents are digital streaming media signals, and the first and second content sources are digital streaming media servers."

The Examiner has not provided any explanation whatsoever to support the rejection of claim 29. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitation recited in claim 29.

The Applicant therefore respectfully submits that the above discussion provides additional reasons for the assertion that the rejection of claim 29 is improper and should be withdrawn.

### Conclusion

For the reasons set forth above, the Applicant respectfully submits that the rejections of claims 3-10 and 13-29 under Section 103(a) have been overcome.

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

### Fees

During the pendency of this application, the Commissioner for Patents is hereby authorized to charge payment of any filing fees for presentation of extra claims under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17 or credit any overpayment to Mendelsohn, Drucker, & Associates, P.C. Deposit Account No. 50-0782.

The Commissioner for Patents is hereby authorized to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time if not submitted with the reply.

Respectfully submitted,

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